

1 ROGER D. WINTLE - (State Bar #142484)
THE HERITAGE LAW GROUP
2 99 Almaden Boulevard, Suite 710
San Jose, California 95113
3 Telephone: (408) 925-0146
Facsimile: (408) 923-2100
4 Email: rdw@hlgusa.com

5 Attorneys for Defendants:
JOSE ALFREDO ARELLANO

7 UNITED STATES DISTRICT COURT
8
9 NORTHERN DISTRICT OF CALIFORNIA

10 LANDMARK HOME MORTGAGE, INC.

11 Plaintiff,

12 vs.

13 GUILLERMO FLORES, ALVIN
14 SILBERNAGEL, ATLAS FINANCIAL
SERVICES, INC. dba ATLAS FINANCIAL
15 SERVICES and ATLAS REALTY, BERTHA
MORENO, JOSE ARELLANO, ROBERT W.
16 PETERSON, individually and dba PETERSON
APPRAISAL GROUP, and DOES 1
THROUGH 50

17 Defendants.

Case No. C0704654 JF

THIS CASE IS RELATED TO:

CASE NO. C-07-00369 JF

**ANSWER OF DEFENDANTS JOSE
ALFREDO ARELLANO TO
PLAINTIFF'S UNVERIFIED
COMPLAINT**

JURY DEMANDED

19 COMES NOW Defendant, JOSE ALFREDO ARELLANO, ("Defendant") answering for
20 himself only, in answer to the unverified complaint of Plaintiff LANDMARK HOME
21 MORTGAGE, INC. ("Plaintiff"), on file herein now files this general denial thereto;

22 AS FURTHER, SEPARATE, AND AFFIRMATIVE DEFENSES TO THE COMPLAINT
23 AND EACH AND EVERY CAUSE OF ACTION ASSERTED THEREUNDER, DEFENDANT
24 ALLEGES AS FOLLOWS:

25
26 //

FIRST AFFIRMATIVE DEFENSE

(INSUFFICIENT PLEADING)

1. The Complaint and each and every cause of action thereof, fails to state facts sufficient to constitute a cause of action upon which relief may be granted against this Defendant.

SECOND AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

2. The Complaint and all the alleged causes of action set forth therein, are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

(STATUTE OF FRAUDS)

3. Each cause of action based on or arising from alleged oral or written agreements, representations, or statements are barred by the applicable statute of frauds.

FOURTH AFFIRMATIVE DEFENSE

(WAIVER)

4. The relief sought is barred by the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

(ESTOPPEL)

5. The relief sought is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

6. Plaintiff has unclean hands with respect to the matters at issue and relief sought, and are therefore barred from recovery by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

(LACHES)

7. Plaintiff has unreasonably delayed in bringing this action, and this delay has unfairly prejudiced Defendant, such that Plaintiff should be barred from recovery under the Doctrine of Laches.

EIGHTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE DAMAGES)

8. To the extent that Plaintiff has suffered any loss or damage, such loss or damage should be barred or offset by Plaintiff's failure to mitigate their damages.

NINTH AFFIRMATIVE DEFENSE

(COMPARATIVE NEGLIGENCE)

9. Plaintiff is barred from any and all recovery on any alleged cause of action by reason of their own negligence in and about the matters of which they complain, which negligence contributed substantially to any harm Plaintiff may have suffered, and Defendant is entitled to have any liability that might be found against him offset by the comparative negligence of Plaintiff.

TENTH AFFIRMATIVE DEFENSE

(COMPARATIVE NEGLIGENCE OF OTHERS)

10. If Plaintiff suffered any loss or harm, such loss or harm was caused by the acts or omissions of Plaintiff and other persons and was not caused by any act or omission of Defendant, and therefore Defendant is entitled to have any liability that might be found against him offset by the comparative negligence and fault of such other persons.

ELEVENTH AFFIRMATIVE DEFENSE

(PROXIMATE CAUSE)

11. Any injury or damages to Plaintiff herein was proximately caused by Plaintiff's own conduct.

TWELFTH AFFIRMATIVE DEFENSE

(PRIVILEGE)

12. All acts of Defendant were privileged, as they were performed with a reasonable belief in the facts and Defendant had a right to act as it did.

THIRTEENTH AFFIRMATIVE DEFENSE

(NO DAMAGES)

13. Plaintiff has not sustained damages as a result of any acts of Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

(ASSUMPTION OF THE RISK)

1 14. Plaintiff knowingly assumed the risks incidental to the matters set forth in the
2 Complaint.

3
4 FIFTEENTH AFFIRMATIVE DEFENSE

5 (NO RELIANCE)

6 15. Plaintiffs did not rely on information given to them on the loan applications since
7 Plaintiff was responsible for verifying all borrower information prior to making loans to
8 borrowers.
9

10 SIXTEENTH AFFIRMATIVE DEFENSE

11 (IMMATERIAL ERROR)

12 16. Any error which may have been made by Defendant is minor, correctable, and
13 immaterial
14

15 WHEREFORE, Defendant prays that:

- 16
17 1. Plaintiff takes nothing by the Complaint;
18 2. Defendant be awarded its reasonable attorney's fees incurred herein; and
19 3. Defendant be awarded its costs of suit incurred herein.
20 4. Defendant be granted such other and further relief as the court deems just and proper.
21

22 Dated: 11/21/07

23 Respectfully Submitted,

24 **THE HERITAGE LAW GROUP**

25 
Roger D. Wintle

26 Attorneys for Defendant:

27 JOSE ALFREDO ARELLANO
28